

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN MEDICAL RESPONSE	:	Case No. 05-CA-221233
MID-ATLANTIC, INC.	:	
	:	
<i>and</i>	:	
	:	
MOSIAH O. GRAYTON, AN INDIVIDUAL	:	

RESPONDENT’S MOTION FOR CLARIFICATION

As the Respondent in the above-captioned case, American Medical Response Mid-Atlantic, Inc. (hereafter, the “Company”) hereby respectfully requests, by and through the Undersigned Counsel, and pursuant to Section 102.49 of the Board’s Rules and Regulations, that the Board clarify, as requested below, the Order (hereafter, the “Order”) that the Board issued in the above-captioned case on November 24, 2020.

Through the Order, the Board denied a Motion for Reconsideration (hereafter, the “Motion”) that the Company filed in connection with a Decision and Order (hereafter, the “Decision”) that the Board issued on July 17, 2020. 369 NLRB No. 125. There, based on an analysis under Atlantic Steel, Co., 245 NLRB 814 (1979), the Board concluded that the Company imposed personnel actions on the Charging Party that violated Section 8(a)(1) of the Act. As part of the Motion, the Company requested that the Board reconsider the Decision under General

Motors, Inc., 369 NLRB No. 127 (July 21, 2020), where the Board announced that Wright Line would now apply to all pending cases that would otherwise be decided under Atlantic Steel. In the Order, the Board denied the Motion and offered only the following as an explanation for denying the Motion:

The [Company] has not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(c)(1) of the Board's Rules and Regulations.

Given the circumstances of the case, respectfully, the Company does not believe that the Order meets the requirements of the Administrative Procedure Act (hereafter, the "APA"). 5 U.S.C. §§ 500, *et seq.* As explained by the Company's Reply to the General Counsel's Opposition to the Motion (see pages 1 – 6), the Board has taken the position before at least one United States Court of Appeals that General Motors applies to cases that were decided well before the one now before the Board. Indeed, as part of General Motors, the Board made clear that, in accord with the agency's "usual practice," the Wright Line analysis would apply retroactively to "*all pending cases in whatever stage.*" 369 NLRB No. 127, slip op. at *10 – 11 (emphasis added).

As the Board is aware, under the APA, the Board may not engage in any action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A). As explained by the case law, the APA sets forth an expectation that, among other things, an agency "articulate a

satisfactory explanation for its actions.” See e.g., Fred Meyer Stores, Inc. v. NLRB, 865 F.3d 630, 638 (D.C. Cir. 2017). Given the fact the Board decided to apply General Motors retroactively, and the position of record that the Board has taken before the federal courts on the sweeping reach of General Motors retroactive application, respectfully, the Board clearly owed the Company something more than the conclusory, if not dismissive statement set forth by the Order.

Accordingly, pursuant to Section 102.49 of the Board’s Rules and Regulations, the Company requests that the Board modify the Order by clarifying why the Board did not reconsider the Decision under General Motors. As explained above, the Company believes the APA compels the Board to come forward with the requested explanation. Furthermore, insofar as the Decision and the Order will likely be the subject of further proceedings, whether by virtue of a Petition for Review and / or an Application for Enforcement filed with the appropriate United States Court of Appeals, the Company believes the explanation is necessary in order for there to be any meaningful court review of the Board’s actions.¹

¹ The Company also notes that, should the Board decline to come forward with the requested explanation, the Company reserves any and all rights to request that the reviewing court deny enforcement of the Decision, as opposed to remanding the proceedings to the agency in order for the Board to provide an explanation for denying the Motion.

Dated: December 8, 2020
Glastonbury, CT

Respectfully submitted,

/s/ _____

Bryan T. Carmody
Carmody & Carmody, LLP
Attorneys for Respondent
134 Evergreen Lane
Glastonbury, CT 06033
(203) 249-9287
bcarmody@carmodyandcarmody.com

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN MEDICAL RESPONSE	:	Case No. 05-CA-221233
MID-ATLANTIC, INC.	:	
	:	
<i>and</i>	:	
	:	
MOSIAH O. GRAYTON, AN INDIVIDUAL	:	

CERTIFICATE OF SERVICE

As an attorney duly admitted to the practice of law, I do hereby certify that,
on December 8, 2020, I served a copy of the document above on the following *via*
e-mail:

Christy Bergstresser
Counsel for the General Counsel
1015 Half Street, Southeast, Suite 6020
Washington, D.C. 20570
Christy.Bergstresser@nrlrb.gov

Mosiah Grayton
445 Newcomb Street, Southeast
Washington, D.C. 20032
Mgrayton90@gmail.com

Dated: December 8, 2020
Glastonbury, CT

Respectfully submitted,

/s/ _____

Bryan T. Carmody
Carmody & Carmody, LLP
Attorneys for Respondent
134 Evergreen Lane
Glastonbury, CT 06033
(203) 249-9287
bcarmody@carmodyandcarmody.com